Statement of Objects and Reasons.

TRUSTS, in the strict sense in which that term is used by English lawyers, that is to say, trusts, to the existence of which a 'legal' estate and an 'equitable' estate, wholly separate from and independent of each other, are necessary are unknown to Hindu and Muhammadan law. But trusts in the wider sense of the word, that is to say, obligations annexed to the ownership of property which arise out of a confidence reposed in and accepted by the owner for the benefit of another, are well recognised and acted upon in this country. In 1879, a Bill codifying the law relating to trusts in the wider sense was laid before the Indian Law Commission. This Bill became law in 1882, under the title the Indian Trusts Act, 1882, (II of 1882), in the Provinces.

So far as Mysore is concerned, though trusts are fully recognised, there is very little legislation with regard to them. The Indian Penal Code as in force in Mysore contains provisions for the punishment of criminal breach of trust; the Specific Relief Act defines "trust" and "trustee" and provides that a trustee may sue for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled; the Civil Procedure Code contains provisions for the conduct of suits by or against trustees, executors and administrators (Order 31, rules 1 to 3) and for suits relating to public charities (Section 92); the Limitation Act provides that no suit against an express trustee or his legal representative or assigns shall be barred by any length of time, and contains provisions for the limitation of suits to make good the loss caused by the breach of trust of a person deceased, for contribution against the purchaser of moveable property from a trustee and against the purchaser of land from trustee (Section 10 and First Schedule Articles 98, 100, 133 and 134). With the exception of these provisions and the Religious and Charitable Institutions Act, 1927, (VII of 1927), the Statute-book is silent on the subject of private secular trusts.

The object of the present Bill, which is based on the Indian Trusts Act, 1882, is to codify the law relating to trusts in the wider sense above described; but it saves the rules of Muhammadan law as to *waqf*, and the mutual relations of the members of an undivided family as determined by any customary or personal law. And it leaves untouched public or private religious or charitable endowments.

The Bill distributes the subject under the following heads: I, preliminary: II, the creation of trusts: III, the duties and liabilities of trustee: IV, their rights and powers: V, their disabilities: VI, the rights and liabilities of the beneficiary: VII, vacating the office of trustees: VIII, the extinction of trusts; and IX, certain obligations of the nature of trusts.

In the preliminary chapter 'a trust' has been defined as an obligation annexed to the ownership of property and arising out of confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another or of another and the owner. In order to prevent the introduction of conceptions resembling the English legal estate and equitable ownership, the interest of the beneficiary is defined as his right against the trustee as owner of the property. The beneficiary has, under the Bill, no estate or interest in the subject-matter of the trust. The Bill also defines 'breach of trust' and declares that a person has 'notice' of a fact when he actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information is given to, or obtained by, his agent under the circumstances mentioned in section 229 of the Indian Contract Act as in force in Mysore.

The second chapter deals with the creation of trusts. It declares (clause 4) that a trust may be created for any 'lawful purpose', and, as there is a general analogy between a trust and a contract, the Bill defines such purpose to be lawful in the cases in which section 23 of the Indian Contract Act, declares the object of an agreement to be lawful, namely, where it (*a*) is not forbidden by law, or (*b*) is not of such a nature that, if permitted, it would defeat the provisions of any law, or (*c*) is not fraudulent, or (*d*) does not involve or imply injury to the person or property of another or (*e*) the Court does not regard it as immoral or opposed to public policy. An explanation shows that, where the trust-property is land situate in a foreign country, the trust, to be valid, must not create an estate not recognized by the law of that country.

Oral declarations of trust have been excluded in the case of land and clause 5 of the Bill lays down, that no trust in relation to immoveable property is valid, unless declared (*a*) by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or (*b*) by the will of the author of the trust, or of the trustee, and that no trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

Clause 8 declares that the subject-matter of a trust must be property transferable to the beneficiary, and that it must not be a merely beneficial interest under a subsisting trust. The object of the latter provision is to preclude the complications that would arise from allowing a trust upon a trust.

Clause 9 declares that every person capable of holding property may be a beneficiary. As under the General Clauses Act, 1899, (III of 1899), 'person' includes a corporation, the Bill here varies from English law. But the variation is intentional, as it has been more than once held that the Mortmain Statutes are not in force in India.

Chapter III deals with a trustee's duties and liabilities. None of the rules here contained call for remark except clauses 20, 22 and 24. Clause 20 gives a list of the securities on which alone a trustee may invest trust-funds. Clause 22 also allows a trustee to deposit a trust-fund not exceeding Rs. 3,000 in a Government Savings Bank, and to invest on mortgage of land already pledged as security for an advance under the Land Improvement Act. Clause 24 declares the measure of the trustee's liability in case of a breach of trust, and embodies, as illustrations the rules on which Courts of Equity act where trust-property improperly left outstanding is lost, or where a trustee retains money which should be invested, or neglects a direction to invest, or to accumulate, or improperly sells trust-securities, or is guilty of unreasonable delay in investing trust-funds or in paying them to the beneficiary. The clause further sets out the circumstances under which a trustee committing a breach of trust is liable to pay interest and the cases in which that interest is compound.

Chapter IV treats of the rights and powers of trustees. Clause 35 of the Bill empowers trustees to apply, not only to the High Court, but to District Courts, for advice on simple questions respecting the management and administration of the trust-property. Under clause 37, which deals with the general authority of a trustee, trustees will be able (unless restrained from doing so by the instrument of trust) to grant reasonable agricultural leases, and otherwise act for the benefit of the trust. Except with the permission of the Court, no trustee will be able to lease trust-property for a term exceeding 21 years.

Chapter V deals with disabilities of the trustees. The only clause here calling for remark is clause 54, which declares that no trustee, and no person who has recently ceased to be a trustee, may, without the permission of the Court, buy the interest of the beneficiary in the trust-property, and that such permission shall not be given unless the purchase is manifestly for the benefit of the latter.

In the next chapter—of the rights and liabilities of the beneficiary—the only clauses requiring special notice are clauses 60 and 63. The former provides for the execution of trusts by the Court, and makes no distinction between the cases where the declaration of trust is complete and those where the trust is executory, *i.e.*, where the declaration of trust is intended to be perfected at some future period.

The latter clause declares that all persons taking immoveable trust-property inconsistently with the trust hold it subject to the trust, except (*a*) purchasers in good faith for consideration without notice of the trust, and (*b*) purchasers for consideration from such purchasers. This agrees with the English rule which, to prevent stagnation of property, exempts from the trust a purchaser with notice from an innocent purchaser without notice, who has got the legal estate.

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Chapter VII treats of vacating the office of trustee, and, incidentally, deals with the appointment of new trustees, and declares that, on the death or discharge of one of several co-trustees, the trust survives and the trust-property passes to the others, unless the instrument of trust expressly declares otherwise.

Chapter VIII treats of the extinction of trusts and, incidentally, of their revocation.

Where no trust is declared, but for the purposes of Justice the law deems one to have been created, the trust is by English lawyers termed constructive. *Benami* transactions, where property is transferred to A for a consideration paid by B, and B makes the payment for his own benefit are common. Chapter IX avoids the fiction implied in the term 'constructive trusts' by treating such confidences as obligations in the nature of trusts properly so called. It specifies the thirteen principal cases in which such an obligation arises, as follows:—

1. Where it does not appear that the transferrer of property intended to dispose of the beneficial interest (clause 82).
2. Where property is transferred to one person for a consideration paid by another (clause 83).
3. Where the trust is incapable of execution or is executed without exhausting the property (clause 84).
4. Where a transfer of property is made for an illegal purpose (clause 85).
5. Where a bequest is made for an illegal purpose, or where the revocation of a bequest is forcibly prevented (clause 86).
6. Where a transfer is made in pursuance of a rescindible contract (clause 87).
7. Where a debtor becomes his creditor's legal representative (clause 88).
8. Where a pecuniary advantage is gained by a person in a fiduciary character (clause 89).
9. Where an advantage is gained by the exercise of undue influence (clause 90).
10. Where an advantage is gained by a tenant for life or other qualified owner in derogation of the rights of other persons interested in the property (clause 91).
11. Where property is acquired with notice of an existing contract affecting it (clause 92).
12. Where a person contracts to buy property to be held on trust (clause 93).
13. Where one of several compounding creditors, by a secret arrangement with the debtor, gains an advantage over his co-creditors (clause 94).

The Bill also contains a general clause (clause 95) providing for cases not so specified.

The Bill declares that, in the case of all obligations in the nature of a trust, the obligor shall be subject to the liabilities and (with the two exceptions mentioned in clause 96) to the disabilities of an ordinary trustee.